

JUDICIAL REGISTRAR RECRUITMENT

BACKGROUND

Further to my memorandum of 22 August 2018 regarding the registrar recruitment exercise, this paper provides a further update on the recruitment exercise and recommendations endorsed by the recruitment panel for the appointment of candidates to the Senior National Judicial Registrar (SES2), National Judicial Registrar & District Registrar - VIC, QLD and WA (SES1), Judicial Registrar & District Registrar - TAS (Legal 2) and National Judicial Registrar – Native Title (SES1) positions, subject to your consideration and approval.

As you are aware, this recruitment exercise is about building a national registrar resource base and structure that comprises highly capable senior legal staff, is flexible and can adapt to national and local workload demands. An analysis of registrar resources and workload has been undertaken and is outlined briefly in this paper. It is evident that the allocation of registrar resources, on a national and local basis, needs to be considered in order to meet workload and complexity demands. Options for the structure of registrar resources, have been outlined in this paper, for your consideration and discussion.

OVERVIEW – REGISTRAR RESOURCES & WORKLOAD

Judicial Registrars

- Currently, there are 20.4 Judicial Registrars in the registries, this will increase to 24.4 when the vacant National Judicial Registrar and District Registrar positions in VIC, QLD, WA and TAS registries are backfilled.
- There has been a reduction in Judicial Registrar resources over the past few years, while workload has not decreased correspondingly (e.g. 29 to 20.4 registrars since July 2014).
- In NSW and VIC, the registries with the highest judicial and registrar workload, including a significant component of complex filings (Commercial and Corporations NPA), the reduction in registrars resources has been significant (e.g. in VIC - 8 registrars to 3.6 registrars since July 2014).

The table below provides an overview of registrar resources in each registry from 2014 to the present:

	July 2014	Current
NSW/ACT	7	5.8
VIC/TAS	8	3.6 (2 vacant positions)
QLD	3	3 (1 vacant position)
SA/NT	2	2
WA	3	2 (1 vacant position)
Native Title	6	4
	29	20.4 (24.4)

Average workload per Judicial Registrars

- Judicial Registrars undertake 56% of their work in the FCA and 44% of their work in the FCC.
- In 2018, the ratio of workload per Judicial Registrar is 1:302. The workload is based on the number of FCA and FCC registrar filings, mediation outcomes and other types of registrar work (e.g. Examinations & Production of Documents, Return of Subpoena, Long Form Bills of Costs, Short Form Bills / Certificates of Taxation, eCourtroom).

- Based on the current number of Judicial Registrars across all NPAs, the highest ratio of workload per Judicial Registrar is in VIC (439), followed by NSW (340), QLD (288), SA (223) and WA (160).

The table below provides an overview of the ratio of workload per Judicial Registrar in each registry:

	TOTAL FCA	TOTAL FCC	COMBINED WORKLOAD TOTAL	NO. OF REGISTRARS	AVG. PER REGISTRAR
VIC	782	753	1535	3.6	439
NSW	1283	933	2216	6.8 (includes 1 Native Title Registrar)	340
QLD	577	574	1151	4 (includes 1 Native Title Registrar)	288
SA	168	131	299	2	243
WA	445	196	641	4 (includes 2 Native Title Registrars)	160
ACT	55	41	96	Refer to NSW	
NT	152	36	188	Refer to SA	
TAS	27	18	45	Refer to VIC	
TOTAL	3489	2682	6171	20.4	302

Mediation Referrals & Outcomes

- The number of mediation referrals is increasing across the FCA and FCC:
 - In 2017 - 1042 matters referred to mediation: FCA – 429 and FCC – 613
 - In 2018 - projected that this will increase to 1230 matters referred to mediation:
 - FCA – 522. Projected 21 % increase
 - FCC – 708. Projected 15% increase
- In 2018, NSW and VIC have the highest number of mediation referrals, at least double that of other registries:
 - NSW: 264 referrals (FCA – 119 and FCC – 145)
 - VIC: 259 referrals (FCA – 140 and FCC – 119), noting that VIC is a smaller registry than NSW and has less registrars.
- In terms of complexity, VIC has the highest number of FCA matters referred to mediation (49%) compared to NSW (33%) in 2018.
- Overall resolution rates:
 - FCA - reduction in resolution rates: 2017 - 57% and in 2018 (year to date) - 45%.
 - FCC - resolution rates have remained steady: 2017 – 54% and in 2018 (year to date) - 57%.
- Resolution rates across registries:
 - FCA - resolution rate across registries are varied: NSW (50%), VIC (48%), WA (32%), QLD (26%).
 - FCC - resolution rates are more consistent and range from 63% - 52%.

- Currently, the capacity of registrars to conduct mediations, particularly in the NSW and VIC is limited with mediations not being scheduled for at least 6 months. A number of FCA and FCC judges have raised concerns about the limited availability of registrars to conduct mediations. Although it is anecdotal it is possible that the reduction in the number of registrars and the increased 'units of work' per registrar is having an impact on the resolution rates.

FCA and FCC Mediation Referrals (2016 – 20-Aug-2018*)

	No of filings	FCA matters referred to mediation	% of judge matters filed to mediation	No of filings	FCC matters referred to mediation	% of judge matters filed to mediation	No of filings	Total	FCA as % of total referrals
2016	1322	422	32%	1555	598	38%	2877	1020	41%
2017	1458	429	29%	1779	613	34%	3237	1042	41%
2018*	959	348	37%	1062	472	44%	2021	820	43%
	3739	1199	32%	4396	1683	38%	8135	2882	42%

Note: Excludes migration

Mediation referrals by State (as at 20-Aug-2018)

	No of filings	FCA	% of judge matters filed to mediation	No of filings	FCC	% of judge matters filed to mediation	No of filings	Total	FCA as % of total referrals
NSW	364	119	33%	304	145	48%	668	264	47%
VIC	287	140	49%	319	119	37%	606	259	54%
QLD	127	28	22%	205	85	41%	322	113	25%
WA	98	27	28%	101	65	64%	199	92	29%
SA	37	13	35%	89	34	38%	126	47	28%
ACT	23	11	46%	29	17	59%	52	28	39%
NT	13	4	31%	8	2	25%	21	6	67%
TAS	10	6	60%	7	5	71%	17	11	55%
	959	348	32%	1062	472	44%	2021	820	

Note: Excludes migration

FCA and FCC Mediation Outcomes (2016 – 20-Aug-2018*)

	FCA					FCC				
	Resolved	Resolved-In-Part	Not resolved	Total	Resolution Rate	Resolved	Resolved-In-Part	Not resolved	Total	Resolution Rate
2016	182	15	185	382	52%	259	8	233	500	53%
2017	181	9	143	333	57%	263	10	231	504	54%
2018*	114	9	149	272	45%	231	9	181	421	57%

Mediation outcome by state (as at 20 August 2018)

	FCA					FCC				
	Resolved	Resolved-In-Part	Not resolved	Total	Resolution Rate	Resolved	Resolved-In-Part	Not resolved	Total	Resolution Rate
NSW	46	1	47	94	50%	67	-	44	111	60%
VIC	45	4	53	102	48%	61	3	59	123	52%
QLD	4	1	14	19	26%	37	6	25	68	63%
WA	7	1	17	25	32%	44	-	33	77	57%
SA	5	1	8	14	43%	12	-	11	23	52%
ACT	4	1	4	9	55%	10	-	6	16	62%
NT	2	-	2	4	50%	-	-	1	1	-
TAS	1	-	4	5	25%	-	-	2	2	-
	114	9	149	272	45%	231	9	181	421	57%

Judicial Registrar Filings

- FCA:
 - Corporations filings have remained steady since 2015 (2,665) and there is minimal change projected from 2017 to 2018 figures (2,652 to 2,665). Any increase in filings since 2015 has been confined to NSW (85%) and Victoria (132%).
 - Overall, the FCA Corporations and Bankruptcy filings has remained steady from (2,801) in 2015 to a projected (2,871) in 2018.
- FCC
 - FCC Registrar Bankruptcy filings have made up on average 33% of overall FCC filings over the past four years (2015 – 38%, 2016 – 37%, 2017 – 27%, 2018 (projected) – 27%).
 - The number of FCC Registrar Bankruptcy filings has been steadily decreasing since 2015. Since 2015 there has been an 18% decrease in FCC Registrar Bankruptcy filings (2015 – 3412 filings, 2016 – 3388 filings, 2017 – 2871 filings, 2018 (projected) – 2810 filings).
 - In 2018, FCC Registrar Bankruptcy filings comprised: 89% Sequestration order/Creditor's Petitions, 5% Substituted Service, 5% Set Aside Bankruptcy Notice and 1% Examination.
 - In 2018, NSW has the largest proportion of FCC Registrar Bankruptcy (35%) followed by VIC & QLD (25% each). This has been consistent over the last 4 years, save for QLD (from 20% in 2015 to 25% in 2018).

40 - 30
30 - 10
7 FCC
made
Registrar
by
40 - 30

RECOMMENDATIONS - SENIOR JUDICIAL REGISTRAR POSITIONS

To build a national registrar resource base to meet workload and complexity demands, the recruitment panel recommends the appointment of the following candidates to the senior judicial registrar positions:

POSITION	LEAD CANDIDATES	RECOMMENDATION / COMMENTS
Senior National Judicial Registrar (National) (SES2)	Paul Farrell (Syd): Senior Corporate Counsel at AON since 2008.	Appoint to position.
	Susan O'Connor (Syd): Principal of Griffith Hack Lawyers since 2014.	Appoint to a new Judicial Registrar – Legal 2 position (Syd). Would require allowance equivalent to SES1 or higher. Additional cost unless resource allocation scenario is applied (see section below).
	Drew Pearson (Syd): Partner at Herbert Smith Freehills since 2013.	Appoint to a new Judicial Registrar – Legal 2 position (Syd). Would require allowance equivalent to SES1 or higher. Additional cost unless resource allocation scenario is applied (see section below).
	Peter Schmidt (Brisb): Partner at Norton Rose Fulbright since 2001.	No offer. Location / workload issue. Also, unlikely to accept more junior role.
National Judicial Registrar & District Registrar – VIC Registry (SES1)	Jacinta Ellis: Senior Manager - Legal (APRA) since 2008.	Withdrawn – considered lead candidate. Has accepted senior position at NAB at SES2 equivalent level. Timing and money were a factor.
	Tim Luxton (internal): currently acting in the position. Nominal position is Judicial Registrar – VIC Registry.	Appoint to position.

✓
IFA OK (Funds)
IFA OK (Funds)
Shane
✓

	Phillip Allaway (internal), Judicial Registrar – VIC registry, FCA.	No offer.
	Claire Gitsham : Partner at Thomson Geer, Melbourne - Dispute Resolution.	Appoint to backfill vacant Judicial Registrar – Legal 2 position (Melb), previously Tim Luxton's role. Would require allowance equivalent to SES1. Expected to be budget neutral.
National Judicial Registrar & District Registrar – QLD Registry (SES1)	Murray Belcher (internal): currently acting in the position. Nominal position is Judicial Registrar – QLD Registry.	Appoint to position subject to Murray's existing Judicial Registrar (Legal 2) position not backfilled. Refer to Greenwood J memorandum
	Cameron McLeod : Partner - Lander and Rogers, insurance (leads Brisbane office).	
	Anthony Haly : Partner – litigation, HWL Ebsworth (Brisbane).	Recommended applicant
National Judicial Registrar & District Registrar – WA Registry (SES1)	Victoria Butler : Partner at Jackson McDonald and Practice Group Leader of the Dispute Resolution and Litigation Team.	Withdrawn – considered lead candidate. Has accepted other senior position.
	Russell Trott (internal): currently acting in the position. Nominal position is Judicial Registrar – WA Registry.	Appoint to position. Russell's existing Judicial Registrar (Legal 2) position: backfill with Mathew Benter
	Mathew Benter : Director – MKB Legal Consulting	Appoint to backfill vacant Judicial Registrar (Legal 2) position (WA), previously Russell Trott's role. May require allowance equivalent to SES1. Budget: it is expected that a component of this would be covered by the budget from Elizabeth Stanley's position (retiring – 4 December 2018).
Judicial Registrar & District Registrar – TAS Registry (Legal 2)	Susie Stone , Counsel at Allens, Melbourne	Appoint to position. Per my previous memo, Susie is the only suitable candidate for the position.
National Judicial Registrar – Native Title (National) (SES1)	Katie Stride (internal): currently acting in the position. Nominal position is Judicial Registrar – Native Title.	Appoint to position.
	Ann Daniel (internal), Judicial Registrar – VIC registry, FCA.	No offer.

✓ budget

✓ No SES

OK

NO SES
BUT DR
IFR

OK

OK
Legal 12

✓

REFORM THE ALLOCATION OF JUDICIAL REGISTRAR RESOURCES

Outlined below are two options for the restructure of Judicial Registrar resources in order to meet ongoing workload and complexity demands:

Option 1:

There is no reallocation of current budget resources to the registries with critical workload demands (i.e. shift budget from WA/QLD to NSW) in order to address any concerns that may be raised by WA or QLD judges that resources are being moved from their registry. However, in NSW additional registrar resources are added (i.e. 2 x registrars) to address the workload demand. This will incur an estimated ongoing budget cost of approximately \$420,000. This option will address critical workload issues however significantly increase the budget cost on an ongoing basis.

Option 2:

The reallocation of Judicial Registrar resources to ensure registrar resources meet workload demands and workload complexity issues. This will address the critical workload demand in the NSW and VIC registries and although in the short term there will be a cost of approximately \$105,000, it is envisaged that in the longer term it is estimated to be budget neutral (e.g. when one Judicial Registrar in NSW leaves the Court and is not replaced it is possible that there is a savings of approximately \$45,000).

Option 2 is outlined below:

- SA/NT: Status quo of registrars – 2 FTE (Nicola Colbran, Nic Parkyn) ✓
- TAS – appoint Susie Stone. As the candidate is currently located in Melbourne, candidate to undertake full induction and training (estimated 6-12 months) in VIC, thereafter to transition to TAS. Following transition, it is anticipated that this position will support VIC to an equivalent of 0.5 FTE.
- VIC – Tim Luxton is formally appointed to the senior role that he is currently acting in. Claire Gitsham is appointed to backfill Tim Luxton's role as a Judicial Registrar, Legal 2, but with allowance equivalent to SES1. Budget neutral. Therefore, in VIC, there would be 4.6 FTE (Tim Luxton, Phillip Allaway, David Ryan, Rupert Burns (0.6), Claire Gitsham), plus any support from the TAS position. 50% -
- QLD: Status quo of registrars – 3 FTE (Murray Belcher, Katie Lynch, Michael Buckingham) is maintained, with Murray formally taking on the senior role that he is currently acting in. The resources associated with Murray's existing Judicial Registrar (Legal 2) position to be utilised for budget purposes in NSW.
- WA: Russell formally appointed to the senior role that he is currently acting in. Russell's existing Judicial Registrar (Legal 2) position to be backfilled with Matthew Benter. This may be budget neutral, or there may be a need to provide an allowance up to SES1 level. In addition, Elizabeth Stanley has advised that she will retire on 4 December 2018. It is proposed that the resources associated with Elizabeth's existing Judicial Registrar (Legal 2) role be utilised for budget purposes in, first, covering any additional allowance to Matthew Benter and secondly, the balance to be utilised for budget purposes in NSW. Elizabeth Stanley's position would not be back filled. Overall, the impact on the budget is neutral.
- NSW/ACT – existing registrars: Michael Wall (SES2), Tony Tesoriero (Legal 2, 0.6 FTE), Chuan Ng (Legal 2), Tom Morgan (Legal 2, 0.8 FTE), Geoff Segal (Legal 2), Kim Lackenby (Legal 2, 0.2 FTE) James Cho (Legal 1) to continue in current positions. In addition, NSW to receive additional resourcing of two Judicial Registrars (Legal 2, but with an allowance equivalent to SES 1), namely Susan O'Connor and Drew Pearson. NSW would then have 7.8 FTE. It is proposed that on the attrition of registrar's through retirement, redundancy or other form of exit, that the first such

position not be backfilled and the second such position be considered at that time, such that the overall position is that NSW be maintained at approximately 6.0 -7.0 FTE.

The table below provides a summary of the proposed Judicial Registrar FTE per registry and the budget adjustments as a result of the reallocation of Judicial Registrar resources:

Registry	Current Registrar FTE	Proposed Registrar FTE	Budget* + / -
SA/NT	2.0	2.0	Budget Neutral
TAS	1.0	1.0	Budget Neutral
VIC	4.6	4.6	Budget Neutral
QLD	4.0	3.0	Budget reallocation to NSW of approximately \$165,000.
WA	3.0	2.0	Budget reallocation to NSW of approximately \$150,000. *For 2018/2019, the reallocation of funds will be approximately \$50,000.
NSW	5.8	7.8 *(but to be reduced to 6.0 – 7.0 over time)	Receiving approximately \$315,000 from QLD and WA. Additional cost of approximately \$420,000 for additional registrars, <u>less budget from other locations is approximately \$105,000.</u> *Over time, to be budget neutral (e.g. when one Judicial Registrar in NSW leaves the Court and is not replaced it is possible that there is a savings of approximately \$45,000)

Note: Budget includes to salary & allowances only

Initially, there will be an overall budget increase of approximately \$105,000, however overtime it is estimated to be budget neutral (e.g. when one Judicial Registrar in NSW leaves the Court and is not replaced it is possible that there is a savings of approximately \$45,000).

Proposal

It is proposed that option 2 is implemented.

The current configuration of registrar resources does not take into account the workload ratio between registries. The re-allocation of registrar resources, on a national and local basis, needs to be considered in order to meet workload and complexity demands. The alternative is to apply the current funding model, which would result in the inability to take advantage of the opportunity that now arises from the recruitment process, to secure capability. It would also continue the current resourcing inequality, whereby there is an imbalance of resources having regard to workload and complexity demands.

The proposed resource model would involve the following key features:

- Judicial Registrar work that is not location specific and can be done remotely, utilising the ECF, being undertaken by any Judicial Registrar nationally to maximise the efficient use of resources and alleviate the impact of peak workload. The type of matters that have already been identified that can be undertaken in such a manner include eCourtroom substitute service applications, issuing of summonses for examinations, Bills of Costs and duty registrar work.
- Complex registrar work is undertaken by National Judicial Registrars and Judicial Registrars and less complex work is undertaken by the appropriate level registrar locally or nationally,

who are supported by legally trained support staff. This should facilitate the freeing up of experienced registrars to undertake additional mediation and case management support for judges and to support the Chief Justice and National Coordinating Judges with the management of NPAs nationally.

- Mediation training to be undertaken with all current and new Judicial Registrars with a focus on implementing the practices and procedures outlined in the national mediation model.

It is important to stress that nothing in the proposed model will lead to a diminution in registrar support for judges in the smaller registries. In fact, it is envisaged that with the national registrar structure, including additional support of specialised registrars in the area of migration, FCC work and senior registrars who can undertake work nationally, each of the smaller registries should experience either the same or greater level of support.

Sia
Changes to be managed within

17/18 NOR appropriation.

Proposed recruitment approved

subject to the me seeing + approving

~~reconcilable~~ reconciliation of

costs against budget by Finance

Dept (Kat Hunter + Catherine Sullivan) &

enforce

25/9/18

SES positions W.A. + QLD not to be

filled - positions to be transferred

to Sydney - WA + QLD DRs to be filled on
Level 2 with allowance (IFAs) if possible.

From: [Sia Lagos](#)
To: [Darrin Moy](#)
Subject: FW: Registrar appointment s
Date: Thursday, 17 September 2020 4:26:01 PM

UNCLASSIFIED

-----Original Message-----

From: Darrin Moy <Darrin.Moy@fedcourt.gov.au>
Sent: Tuesday, 25 September 2018 5:04 PM
To: Warwick Soden <Warwick.Soden@fedcourt.gov.au>; Catherine Sullivan <Catherine.Sullivan@fedcourt.gov.au>; Sia Lagos <Sia.Lagos@fedcourt.gov.au>
Subject: RE: Registrar appointment s

UNCLASSIFIED

Thanks Warwick,

I have added the email to the file.

Kind regards
Darrin

Darrin Moy | Executive Director, People, Culture & Communications Corporate Services | Federal Court of Australia Level 16, Queens Sq, Sydney NSW 2000 p. 02 9230 8887 | m. 0410 585 365 | e. Darrin.Moy@fedcourt.gov.au www.fedcourt.gov.au

-----Original Message-----

From: Warwick Soden
Sent: Tuesday, 25 September 2018 5:03 PM
To: Catherine Sullivan <Catherine.Sullivan@fedcourt.gov.au>; Sia Lagos <Sia.Lagos@fedcourt.gov.au>; Darrin Moy <Darrin.Moy@fedcourt.gov.au>
Subject: Registrar appointment s

Dear All

My reference in my hand written comments on the document discussed with Sia a copy of which I gave to Darrin referred to the 17/18 budget. It should have been the approved 18/19 budget. No confusion or “mischief” intended.

Warwick

Sent from my iPhone